

June 3, 2005

Wen Ling Chin, CFA
Security Analyst
San Francisco Retirement System
30 Van Ness Avenue, Suite 3000
San Francisco, CA 94102-6062

Re: Your Request for Informal Assistance
Our File No. I-05-086

Dear Ms. Chin:

This letter is in response to your request for assistance regarding the gift reporting provisions of the Political Reform Act (the "Act").¹ Although this letter concerns itself with certain incidents of past conduct, it is not being offered as an evaluation of that conduct,² but rather as advice regarding your future reporting obligations. In addition, this letter is solely based on the facts presented to us in your letter requesting advice. The Commission does not act as a finder of fact when issuing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.) Our advice is applicable only to the extent that the facts provided to us are correct, and that all of the material facts have been provided.

QUESTION

Did you receive a reportable gift from Fox Paine & Co., LLC ("Fox Paine") as a result of receiving hotel lodging at Fox Paine's expense when you attended the Fox Paine 2005 Annual Investor Conference?

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Regulation 18329, subd. (c), enclosed.)

CONCLUSION

You did not receive a reportable gift as you fully reimbursed Fox Paine for the cost of the lodging within 30 days of attending the conference.

FACTS

You have been a security analyst with the San Francisco Employees' Retirement System (SFERS) since June 1999. As a security analyst, you are a member of SFERS' alternative investments team, which is generally responsible for monitoring and investing retirement fund assets in private equity partnerships. In that capacity, you were specifically assigned to monitor SFERS' investments in two existing partnerships with Fox Paine, and evaluate an opportunity to invest in a third such partnership. As a security analyst, you are also a designated employee of SFERS and required by its conflict of interest code to disclose reportable gifts that have a value of \$50 or more on your annual Statement of Economic Interests.

Limited partnership agreements typically require that the firm sponsoring the partnership, i.e., the general partner, shall arrange an annual conference for the partnership investors, in order to keep them up to date on the partnership's activities. It is common practice for private equity professionals to attend such annual conferences for the partnerships in which they invest. The cost of an annual conference is an expense of the partnership. Some general partners advance the cost of lodging for the attendees, while others do not. Even if the general partner advances the cost of the lodging, the general partner is fully reimbursed by the partnership. The attendees always pay for their own travel to the conference.

Every March, Fox Paine organizes an investor conference, as required by the limited partnership agreements that it has with SFERS. Fox Paine is the general partner in these partnerships and advances the cost of lodging for conference attendees. This cost is then fully reimbursed by the partnership.

On March 16 and 17, 2005, you attended the two-day Fox Paine 2005 Annual Investor Conference in Miami, Florida as a representative of SFERS. The cost of your lodging during the conference, in the amount of \$917.16, was paid by Fox Paine. Within 30 days after the conference, you personally reimbursed Fox Paine for the full amount of this cost. To the extent that Fox Paine's advance payment for your lodging constituted a gift to you, it must be reported on your 2005 Annual Statement of Economic Interests, due in April 2006.

ANALYSIS

Section 82028 generally defines a gift as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received." A

payment, advance, or reimbursement for travel, including actual transportation and related lodging and subsistence, if it confers a personal benefit on the recipient, and is not provided in exchange for consideration of equal or greater value, will constitute a gift to the recipient unless it is covered by some exception provided for by the Act. A gift of this kind would be subject to the gift limits established by section 89503, and would be reportable on a Statement of Economic Interests for the period in which the gift was received.

You have informed us that earlier this year, Fox Paine advanced the cost of lodging for you to attend the two-day Fox Paine 2005 Annual Investor Conference in Miami, Florida as a representative of SFERS. This advance certainly conferred a personal benefit on you, and it was not provided in exchange for any consideration that you provided to Fox Paine. As such, it constituted a gift to you unless covered by some exception.

Regulation 18943, subdivision (a) provides, in part, that:

A gift is neither accepted nor received if it is returned, donated, or reimbursed in any manner set forth below:

...

- (4) The recipient, within 30 days of receipt or acceptance, reimburses the donor, or the donor's agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement.

You have further informed us that within 30 days of attending the conference you personally reimbursed Fox Paine for the full cost of the lodging that you received. As such, under regulation 18943, you are deemed not to have received a gift from Fox Paine, and you are not required to disclose the cost of the lodging as a gift from Fox Paine on your upcoming Annual Statement of Economic Interests.³

As an additional point, you indicated in your request for advice that it is common for a person in your position to attend investor meetings organized for the limited partnerships that SFERS invests in, and that it is common for the general partner in such partnerships to advance the cost of lodging for the attendees. This suggests that the fact situation discussed in your request may occur again. With this in mind, you may find it beneficial to become familiar with the provisions of Regulation 18944.2

³ In your request for advice, you asked as a follow-up question whether the Commission's response to the question of whether you received a reportable gift would vary depending upon whether you were being compensated by SFERS while you attended the conference or you attended the conference while on vacation. We are declining to respond to this portion of your request for advice, as the Commission will not provide written advice based on hypothetical facts (Reg. 18329, subd. (b)(8)(d); *Carlyle* Advice Letter, No. A-02-033). However, it does not appear that the variables that you propose would be a factor in the Commission's analysis.

Under Regulation 18944.2, if a gift, such as a gift in the form of a payment for lodging, is made to a public agency and the following requirements are met, the individual receiving the lodging would not be required to report it as a gift, and the cost of the lodging would not be subject to the gift limits:

- “(1) The agency receives and controls the payment.
- (2) The payment is used for official agency business.
- (3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.
- (4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation set forth above and which:
 - (A) Identifies the donor and the official, officials, or class of officials receiving or using the payment;
 - (B) Describes the official agency use and the nature and amount of the payment; and
 - (C) Is filed with the agency official who maintains the records of the agency's statements of economic interests where the agency has a specific office for the maintenance of such statements, or where no specific office exists for the maintenance of such statements, at a designated office of the agency, and the filing is done within 30 days of the receipt of the payment by the agency.”

Please note that these provisions may not be implemented retroactively.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Steven Benito Russo
Senior Counsel
Legal Division

SBR:rd
I:\AdviceLtrs\05-086